

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

DERRICK HOWARD,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 4:10CV2365 CDP
)	
BANK OF AMERICA, N.A., et al.,)	
)	
Defendants.)	

MEMORANDUM AND ORDER

Pending before me is plaintiff Derrick Howard's motion for leave to dismiss this action without prejudice under Rule 41(a)(2), Fed. R. Civ. P. Several defendants have opposed the motion, requesting that dismissal be with prejudice because they will be harmed if Howard is allowed to refile. No defendant has filed an answer or a motion for summary judgment. Instead, numerous defendants have moved to dismiss Howard's complaint for lack of subject-matter jurisdiction and for failure to state a claim for relief.


Under Rule 41(a)(1), a plaintiff may voluntarily dismiss an action without prejudice and without leave of Court as of right if no defendant has filed an answer or a motion for summary judgment. *See* Fed. R. Civ. P. 41(a)(1)(A)(i). This answer or motion for summary judgment requirement is strictly construed within the Eighth Circuit. *See, e.g., Safeguard Bus. Sys., Inc. v. Hoeffel*, 907 F.2d 861, 863 (8th Cir. 1990) ("Rule 41 provides that the plaintiff loses the right [to

voluntary dismissal] when an answer or a motion for summary judgment is filed. These two instances have been construed strictly and exclusively.”).

Here, because no defendant has answered Howard’s complaint or filed a motion for summary judgment, Howard may voluntarily dismiss this action without leave of Court and without prejudice. Accordingly, I will construe his motion for leave as a notice of voluntary dismissal, and this case is dismissed without prejudice pursuant to that notice. *See Daughetee v. CHR Hansen, Inc.*, No. C09-4100-MWB, 2011 WL 1043504, at *2 (N.D. Iowa Mar. 17, 2011) (construing a motion for leave to voluntarily dismiss case as a notice of voluntary dismissal pursuant to Rule 41(a)(1) because defendant had not filed an answer or a motion for summary judgment).

Accordingly,

IT IS HEREBY ORDERED that plaintiff Derrick Howard’s motion for leave to dismiss is construed as a notice of voluntary dismissal under Rule 41(a)(1), and this case is dismissed without prejudice pursuant to that notice.


CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 28th day of June, 2011.